

174662

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW
1022 CALHOUN STREET (SUITE 302)
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
ELIZABETH ZECK*
PAIGE J. GOSSETT
RANDOLPH R. LOWELL
K. CHAD BURGESS
NOAH M. HICKS II**
M. McMULLEN TAYLOR

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

June 30, 2005

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

VIA HAND DELIVERY
AND ELECTRONIC MAIL

2005 JUN 30 PM 4:57
RECEIVED
SCE&G

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Box 11649
Executive Center Drive, Suite 100 (29211)
Columbia, South Carolina 29210

RE: Coastal Electric Cooperative, Inc., vs. South Carolina Electric & Gas
Company, Inc.; Docket 2005-154-E

Dear Charlie:

Enclosed for filing on behalf of South Carolina Electric & Gas Company ("SCE&G") in connection with the above-captioned docket are the original and ten (10) copies of the following pleadings, hereby filed in the specific order listed:

1. Motion to Dismiss
2. Answer

It is our intention to file a memorandum in support of SCE&G's motion to dismiss and we would intend to file such memorandum on or before July 20, 2005 unless you determine that a different deadline should be established. Please advise.

(Continued . . .)

The Honorable Charles L.A. Terreni
June 30, 2005
Page 2

We are serving counsel for the complainant with a copy of all pleadings enclosed herewith via hand delivery and electronic mail.

If there are any questions or if further information is needed, please advise.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.


Mitchell Willoughby

MW/cgc
enclosures

cc: The Honorable C. Dukes Scott (via hand delivery and electronic mail)
Florence P. Belser, Esquire (via hand delivery and electronic mail)
Marcus A. Manos, Esquire (via hand delivery and electronic mail)
James B. Richardson, Jr., Esquire
Catherine D. Taylor, Esquire
Patricia Banks Morrison, Esquire

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Glenview, IL

MOTION TO DISMISS

1. Wal-Mart has recently begun construction of a new Wal-Mart store inside the municipal limits of the City of Walterboro.
2. Coastal Electric Cooperative claims a right to supply electric service to the Wal-Mart store, when constructed.

3. The issue of Coastal's right to serve the Wal-Mart, when constructed, is within the exclusive jurisdiction of the Court of Common Pleas.

4. The Commission has no jurisdiction to determine whether Coastal has a right to provide service to a location entirely inside the municipal limits of the City of Walterboro.

5. The Commission has no jurisdiction to determine whether Coastal is empowered as a corporation to provide service to a customer inside municipal limits.

6. The issue of Coastal's claimed right to serve the Wal-Mart is the subject of Case No. 05-CP-15-292 filed April 28, 2005 and now pending in the Court of Common Pleas for Colleton County.

7. Attempting to avoid the jurisdiction of the Court of Common Pleas, Coastal has filed a Complaint with the Commission seeking to circumvent the court's exclusive jurisdiction. Coastal seeks an order from the Commission declaring that it has the corporate authority and the legal right to serve a customer inside a municipality, a request that SCE&G respectfully submits is beyond the jurisdictional authority of the Commission.

8. Since the Commission lacks jurisdiction to determine the issue raised by Coastal's complaint, the Commission should dismiss the Complaint forthwith. Alternatively, Coastal's complaint should be dismissed because another action is pending between the same parties for the same claim in a court having jurisdiction to decide the issue.

This motion will be based upon a memorandum of law to be filed in support of the positions advanced herein and upon such South Carolina law (common and statutory) and such constitutional provisions (federal and state) as may be appropriate.

Respectfully submitted,


Mitchell Willoughby

Paige J. Gossett

Willoughby & Hoefer, P.A.

1022 Calhoun Street, Suite 302

Post Office Box 8416

Columbia, South Carolina 29202-8416

(803) 252-3300

Patricia Banks Morrison

South Carolina Electric & Gas Company

1426 Main St., Legal Dept. 130

Columbia, South Carolina 29218

(803) 217-9356

James B. Richardson, Jr.

1229 Lincoln Street

Columbia, South Carolina 29201

(803) 799-9412

June th30, 2005.

Attorneys for Respondent.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-154-E

FILED
2005 MAY 23 11:58
COLUMBIA
SOUTH CAROLINA

Coastal Electric Cooperative, Inc.,)	
)	
Complainant,)	
)	
-vs-)	ANSWER
)	
South Carolina Electric & Gas Co., Inc.,)	
)	
Respondent.)	
)	

Specifically reserving its rights under its motion to dismiss filed immediately prior to this answer, Respondent South Carolina Electric & Gas Company ("SCE&G" or "Respondent") hereby answers the Complaint filed in the above-captioned docket and would show as follows:

FOR A FIRST DEFENSE:

1. All allegations of the complaint not hereinafter expressly admitted, modified, or explained are hereby denied.

2. Answering paragraph 1: Respondent admits the name and address of the Complainant; admits that Complainant is an electric cooperative; and admits that it provides electric service. Concerning the allegation that Complainant is subject to "certain regulations" by this Commission, Respondent denies that any regulations of this Commission are pertinent to the issue raised in the Complaint. On the contrary, Respondent would show that the issue of whether Complainant has a right to serve a customer inside the municipality of Walterboro is not covered by

any regulation of this Commission nor could it be, since the Commission has no authority to regulate service rights inside municipalities.

3. Paragraph 2 is admitted.

4. Paragraph 3 is denied. The Commission has no jurisdiction of the subject matter of the Complaint, namely, the question of whether Complainant has the legal right to serve an electric customer located wholly within the municipal limits of the City of Walterboro.

5. Answering paragraph 4: Respondent admits that Complainant attempts by its Complaint to raise an issue of municipal service rights but would show that the attempt fails because this Commission lacks jurisdiction to determine electric service rights inside municipalities. Respondent would show that the provisions of the Territorial Assignment Act cited by Complainant in paragraph 4 do not govern the issue of electric service rights inside the City of Walterboro. The Territorial Assignment Act applies only to electric service rights outside the boundaries of municipalities. Complainant's service rights inside the City of Walterboro are governed exclusively by the Electric Cooperative Act and specifically Section 33-49-250 thereof.

6. Paragraph 5 is denied. The customer at issue is a Wal-Mart store presently under construction in the City of Walterboro. The Wal-Mart store did not exist prior to annexation of the property upon which it is presently being constructed.

7. Paragraph 6 is denied. If the reference in the first sentence of paragraph 6 is to the house formerly known as 260 Lagrande Lane, Respondent would show that Coastal discontinued service to the house, deactivated its line, and removed its meter before Wal-Mart announced its plan to construct a store on the tract. Coastal had no electric service to that house or to any other point in any of the three areas annexed by the City of Walterboro, to be occupied by the Wal-Mart store now

under construction. Answering the second sentence of paragraph 6: Respondent lacks sufficient information upon which to form a belief as to the truth thereof and therefore denies same. The allegations of the second sentence, if true, are irrelevant to the issue of whether Complainant has a right to serve the Wal-Mart.

8. Answering paragraph 7: The first sentence is denied. Complainant's only service to any point on the three annexed areas which comprise "the Wal-Mart tract" is construction service. No Wal-Mart store "has been built" as Complainant alleges. Construction of the Wal-Mart has only recently begun. No "premises" exist on the Wal-Mart property as that term — i.e., "premises" — is defined for purposes of determining Complainant's service rights under Section 33-49-250. Answering the second sentence: Respondent would show that the three tracts upon which the Wal-Mart store has recently begun construction were annexed by three separate annexation ordinances, one on December 3, 2003 and two on September 29, 2004. Answering the final sentence of paragraph 7: Respondent would show that Complainant was not serving any premises on the annexed tracts at the time of annexation on December 3, 2003 and September 29, 2004. According to the statute, "premises" are actual buildings requiring service. At the time of annexation, these tracts were merely vacant real estate and clearly not premises. Furthermore, no service was being provided by the Complainant in any manner within these tracts at the time of annexation.

9. Answering paragraph 8: Respondent would show that the issue of Complainant's claimed right to serve the Wal-Mart is the subject of Case No. 05-CP-15-292, filed April 28, 2005 and now pending in the Court of Common Pleas for Colleton County. If Complainant desires a declaration regarding its service rights, it can seek such a declaration in that action. In fact, one of

the purposes for which Case No. 05–CP–15–292 was filed by Respondent is to determine Complainant’s service rights. To the extent that paragraph 8 alleges otherwise, it is denied.

10. Paragraph 9 is denied. Coastal discontinued service to the premises at 260 Lagrande Lane, removed its meter, and removed its line at least a year ago, upon information and belief.

11. Paragraph 10 is denied.

12. Answering paragraph 11: Respondent would show that any electric service contract between Complainant and Wal-Mart is in violation of law and is void. To the extent that paragraph 11 alleges otherwise, it is denied.

13. Paragraph 12 alleges no facts and calls for no factual response. Respondent would respectfully show that the Commission has no authority to determine or declare Complainant's service rights inside the City of Walterboro.

FOR A SECOND DEFENSE:

14. The Wal-Mart store presently under construction is located entirely within the City of Walterboro.

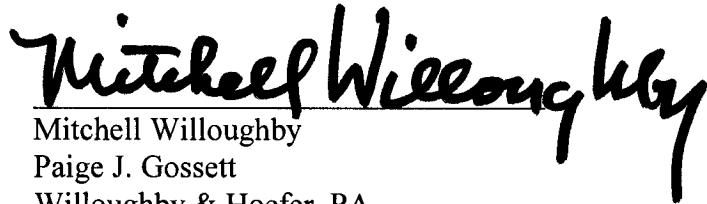
15. The Commission has no authority and no jurisdiction to determine electric service rights inside a municipality.

FOR A THIRD DEFENSE:

16. Case No. 05–CP–15–292, filed April 28, 2005, is now pending in the Court of Common Pleas for Colleton County between the same parties regarding the same issue, namely, Coastal Co-op’s claimed right to supply electricity to the Wal-Mart now under construction in the City of Walterboro.

17. The above-captioned matter must be dismissed, first and foremost, because the Commission does not have jurisdiction to decide the issue presented by the complaint, but also because another action (Case No. 05-CP-15-292 in the Colleton County Court of Common Pleas) is pending between the same parties for the same claim. SCE&G respectfully submits that the Commission would be required to defer to the prior jurisdiction of the Court of Common Pleas for Colleton County.

WHEREFORE, having set forth its answer, Respondent respectfully prays that the Complaint be dismissed.



Mitchell Willoughby
Paige J. Gossett
Willoughby & Hoefer, PA
Post Office Box 8416
Columbia, South Carolina 29202-8416
(803) 252-3300
mwilloughby@willoughbyhoefer.com
pgossett@willoughbyhoefer.com

Patricia Banks Morrison
South Carolina Electric & Gas Co.
1426 Main St., Legal Dept. 130
Columbia, South Carolina 29218
(803) 217-9356
pmorrison@scana.com

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412
jbrcolumbia@aol.com

Attorneys for Respondent.

June ^{30th}, 2005.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-154-E

FILED
2005 JUL 20 AM 11:50
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

IN RE:)
)
Coastal Electric Cooperative, Inc.,)
)
Complainant,)
)
vs.)
)
South Carolina Electric & Gas Company,)
)
Respondent.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I, an employee of the law firm of Willoughby & Hoefer, P.A., on behalf of South Carolina Electric & Gas Company, have served or caused to be served this day one copy each of the **(1) Motion to Dismiss** and **(2) Answer**, upon the persons named below, at the addresses set forth, and in the manner described:


Via Hand Delivery and Electronic Mail

The Honorable C. Dukes Scott
Executive Director
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201
cdscott@regstaff.sc.gov

Florence P. Belser, Esquire
General Counsel
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201
fbelser@regstaff.sc.gov

Via Hand Delivery and Electronic Mail

Marcus A. Manos, Esquire
Nexsen Pruet Adams Kleemeier, LLC
Post Office Drawer 2426
Columbia, SC 29202
mmanos@nexsenpruet.com


Cathy G. Caldwell

June 30, 2005
Columbia, South Carolina